

JUL 07 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HILARIO MIJARES PEREZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-76018

Agency No. A79-533-318

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted June 18, 2008 \*\*

Before: THOMAS, W. FLETCHER, and CLIFTON, Circuit Judges.

Hilario Mijares Perez, a native and citizen of Mexico, petitions for review of  
an order of the Board of Immigration Appeals (“BIA”) denying his motion to

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen to seek relief under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of the motion to reopen for abuse of discretion. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004). We deny the petition for review.

The BIA acted within its discretion in denying as untimely Mijares Perez’s motion to reopen because it was filed more than one year after the BIA’s final administrative decision, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must generally be filed within 90 days after the date of the final administrative decision), and because the time limitation applies to Mijares Perez’s motion, *see* 8 C.F.R. § 1208.18(b)(2) (stating the time limitations only do not apply to motions to reopen for purposes of protection under CAT when the final order of removal became final prior to March 22, 1999). Furthermore, the BIA properly found that Mijares Perez did not meet the “changed circumstances” exception to this timeliness requirement because he failed to present material and previously unavailable evidence of changed conditions in Mexico. *See* 8 C.F.R. § 1003.2(c)(3)(ii).

**PETITION FOR REVIEW DENIED.**